

# EXHIBIT

## **DECLARATION OF MARILYN MARKS**

MARILYN MARKS hereby declares under penalty of perjury, pursuant to 28 U.S.C. (s) 1746, that the following is true and correct:

1. My name is Marilyn Marks
2. I am the Executive Director of Coalition for Good Governance (“Coalition”).
3. I have personal knowledge of all facts stated in this declaration, and if called to testify, I would testify competently thereto.
4. This declaration includes a number of subject matters and documents related to the conduct of Georgia’s elections using the Dominion Voting System, particularly during the June 9, 2020 election and the August 20, 2020 related runoff.

### **Logic and Accuracy Testing Data**

5. The conduct of logic and accuracy tests (“LAT”) is governed by O.C.G.A. 21-2-379.25(c), and requires that the superintendent shall have “each electronic ballot marker tested to ascertain that it will correctly record the votes cast for all offices and on all questions.”
6. However, the Secretary of State’s LAT testing manual dated January 2020 (Martin Declaration Exhibit 1 Section D p. 4) sets out a less extensive test than the above referenced statute. The reduced testing instructions call for at least 1

vote be tested for each candidate in the group of BMDs going to a single polling place. Quoting from page 4:

“Example: Ballot from BMD 1 contains a vote for only the first candidate in each race listed on Ballot Style 1, Ballot from BMD 2 contains a vote only for the second candidate in each race on Ballot Style 1, and continue through the line of devices until all candidates in all races within the unique ballot style have received a single vote.”

7. Under my direction, Coalition analysts undertook observation and testing to determine whether the counties BMD LAT testing was being conducted in accordance with the statutory requirements.

8. Coalition for Good Governance analyst Samantha Whitley, working under my supervision, reviewed the LAT ballots for the Blackrock precinct in Fayette County and the West Ridge Church precinct in Paulding County in the June 9, 2020 election. The test ballots had been received in response to document subpoenas issued to those counties. Ms. Whitley summarized her findings in an email to me dated August 24, 2020 and a true and correct copy is attached as Exhibit 1.

9. Ms. Whitley’s summary shows that for the sample precinct of Blackrock, 320 test ballots should have been generated and scanned if all candidates were tested in the two ballots styles on all BMD machines, but only 32 test ballots were generated. In Paulding County’s West Ridge Church precinct, 528

test ballots should have been generated and scanned, but only 37 test ballots were generated.

10. I assigned Coalition interns and volunteers to observe Fulton County's pre-August 11 runoff Logic and Accuracy Testing. After nearly a dozen failed attempts by Coalition representatives to find any meaningful Fulton County Logic and Accuracy Testing occurring during the publicly stated testing period for the August 11, 2020 election, I became concerned that this very time-consuming LAT was being truncated in an unauthorized manner.

11. I have both participated in and observed LAT activities, and understand from my personal experience that extensive time is required to test a large volume of equipment. It seemed very odd to me that we could not locate much live testing in Fulton County, given the extensive number of hours required.

12. I had estimated that using a minimum time of 15 minutes per BMD deployed, Fulton would need to spend approximately 775 technician hours to conduct LAT on its 3,100 BMD for standard use for each election. Yet we could not locate any meaningful amount of work being done on LAT activities as the election approached.

13. The requirement from the procedure manual obviously involves considerably less testing than required by the statute, O.C.G.A. §21-2-379.25. I

surmised that this sharply reduced testing may be the reason that we could not locate LAT being conducted in Fulton County.

14. The confirmation of Fulton's sharp reduction in pre-election testing of BMDs is expected to be provided in pending discovery when the LAT ballots are produced for inspection.

### **Other Irregularities**

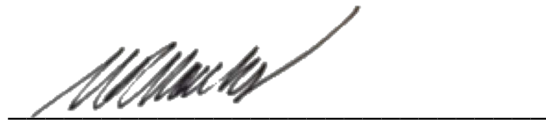
15. Attached as Exhibit 2 is a true and correct copy of an email from Cherokee County voting system technician Johnathan Densmore dated May 21, 2020 regarding the ability for one voter to print and cast multiple live ballots. The email was obtained from a response to a subpoena to Cherokee County elections office.

16. Mr. Densmore of Cherokee County stated to me on a telephone call that he still uses the same usb stick with the new Dominion system that he used for the GEMS system, and transfers data to the web-enabled server with the usb stick. He later sent me a picture of that usb stick by email.

17. Attached at Exhibit 3 contains 4 examples of unadjudicated ballot images from Fulton County's August 11 election obtained in discovery in Fulton County's production of records. They show "Blank Contest" in the AuditMark cast vote record attached to the image although the image clearly shows a detectable vote for candidates.

18. Attached at Exhibit 4 is a true and correct copy of a letter from Cherokee County's counsel Ann Brumbaugh in response to Coalition's subpoena to Cherokee County elections office stating in paragraphs 10 and 11 that there are no responsive documents to our specific requests. Such request related to Secretary of State instruction for procedures to maintain air-gapping of the Dominion server.

Executed this 24<sup>th</sup> day of August, 2020

A handwritten signature in black ink, appearing to read "M. Marks", is written over a horizontal line.

Marilyn Marks

**Subject:** LAT Ballot Reviews

**Date:** Monday, August 24, 2020 at 5:53:47 PM Eastern Daylight Time

**From:** Samantha Whitley

**To:** Marilyn Marks

**EXHIBIT**

**1**

### LAT Test Ballot Memo- Fayette and Paulding

It is my understanding that for a complete Logic and Accuracy Testing, each election on every race and each question must be tested for each BMD in all the precincts. Undervote (blank vote) should also be tested for every race on every machine. I analyzed the LAT records Paulding County provided in their subpoena. Specifically, I analyzed West Ridge Church. Paulding County provided 37 test ballots. According to the ballot recap sheets provided in record 17, West Ridge Church had 12 BMDs on election day. All three ballot types: Republican, Democrat, and Nonpartisan should be tested in addition to the two different elections: Presidential Preference Primary + Primary or just the Primary.

The largest race on the Democrat ballot was President with 12 candidates. The largest race on the Republican ballot was US House district 14 with 9 candidates. The largest race on the Nonpartisan ballot was 2. Taking into account testing for an undervote, all 12 machines should be tested at least 13 times producing 156 Democrat ballots, 10 times producing 120 Republican ballots, and 3 times producing 36 Nonpartisan ballots. Then, for the Republican and Democrat ballots both ballot styles (with and without the Presidential Primary) should be tested. For just the Primary, the largest Democrat race is US Senate with 7 candidates, Republican remains 9, and Nonpartisan remains 3. This totals to be 96 Democrat primary ballots (12x8), 120 Republican primary ballots, and 36 Nonpartisan. This would mean if Logic and Accuracy Testing was properly done there should be 252 Democrat ballots (96+156), 240 Republican ballots (120+120), and 72 Nonpartisan ballots (36+36)- **528** test ballots in total. Paulding county provided only 37 ballots.

I analyzed the LATs Fayette county provided in their subpoena (Record 5- Precinct LAT Ballots). Specifically, I analyzed Precinct 1- Blackrock's LAT ballots. Fayette County provided 32 ballots, of which 25 were Democrat and 7 were Republican. Every ballot provided was a combined PPP/primary ballot. According to the LAT Checklist provided, 10 BMDs were to be tested for the Blackrock precinct. All three ballot types: Republican, Democrat, and Nonpartisan should be tested in addition to the two different elections: Presidential Preference Primary + Primary or just the Primary. Only

Democrat and Republican ballots were provided; therefore, I can assume they did not test any Nonpartisan ballots. Only Presidential Preference Primary + Primary ballots were provided; therefore, I can assume they did not test any Primary ballots.

The largest race on the Democrat ballot was President with 12 candidates. The largest race on the Republican ballot was 3 candidates. The largest race on the Nonpartisan ballot was 2 candidates. Also testing for an undervote, all 10 machines should be tested at least 13 times producing 130 Democrat ballots, 4 times producing 40 Republican ballots, and 3 times producing 30 Nonpartisan ballots. If Logic and Accuracy Testing was properly done there should be 130 Democrat ballots, 40 Republican ballots, and 30 Nonpartisan ballots- 200 test ballots in total. Fayette county only produced 32 ballots. Either not every machine was tested or if every machine was tested, they certainly were not tested for every race on all three ballot styles.

In addition, there were no non-Presidential Preference Primary ballots for all ballot styles. For the Primary ballot, the largest Democrat race would be US Senate with 7 candidates. The Republican and Nonpartisan numbers would remain the same. This would equal 80 Democrat ballots, 40 Republican ballots, and 30 Nonpartisan ballots- 150 test Primary ballots in total. Therefore, Fayette county should have provided **320** test ballots in total for the Blackrock precinct. They produced only 32.



-----Original Message-----

From: Barnes, Michael <[mbarnes@sos.ga.gov](mailto:mbarnes@sos.ga.gov)>

Sent: Thursday, May 21, 2020 12:41 PM

To: Johnathan G. Densmore <[jgdensmore@cherokeeega.com](mailto:jgdensmore@cherokeeega.com)>

Cc: Kim Stancil <[kstancil@cherokeeega.com](mailto:kstancil@cherokeeega.com)>; Jennifer Akins <[jakins@cherokeeega.com](mailto:jakins@cherokeeega.com)>;

Jerrold L. Meadows <[jerrold.meadows@gmail.com](mailto:jerrold.meadows@gmail.com)>; Anne Dover  
<[adover@cherokeeega.com](mailto:adover@cherokeeega.com)>

Subject: Re: ICX Printer Issue

Thank you for the update. As we continue to work With and learn Our new system, it is important to share information like this.

Sent from my iPhone

Michael Barnes

470-316-2884

On May 21, 2020, at 12:14 PM, Johnathan G. Densmore <[jgdensmore@cherokeeega.com](mailto:jgdensmore@cherokeeega.com)> wrote:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good afternoon Michael, I am sure you get tired of seeing my emails with stupid questions, but I have another possible issue that was discovered during training. If a ballot becomes jammed in the printer, when you remove the jam, the printer automatically prints the ballot that was jammed, then if a poll worker (or voter for that matter) selects reprint on the ICX, it will print the same ballot. So now we have two ballots. The public counter on the ICX only shows 1 ballot, even though 2 ballots were printed. When we took both printed ballots to the tabulator, the tab counted both ballots and showed them on the count. This seems like it could be a problem, if it does not affect the actual election, public perception when 2 ballots get printed for the same voter will look very bad. During L&A when we were testing, we did not know how the printer would print the ballot, so the first couple we tested we accidentally grabbed the ballot when it comes  $\frac{3}{4}$  out for the first side and the printer jammed almost 100% of the time we did that. We are afraid that a lot of voters will attempt to grab the ballot the first time and if they do, the printer will jam, and when the jam is cleared we will be seeing more instances where it prints 2 ballots. Also if a candidate has a "buddy" working the polls, what is to stop them from loading extra votes for that candidate during the day or when the polls close in the evening. I understand that numbers on the ICX would not match the number of ballots scanned on the tabulator, but if no audit was done this would never be discovered.

Once again I know you are very busy, and I am sorry to bother you, but Cherokee just wants to make you aware of any issues or problems that could affect the election. Thank you for your time.

Johnathan Densmore

Cherokee County Elections and Voter Registration  
770-479-0407 ext 0228

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# FULTON COUNTY

858-09K

## OFFICIAL ABSENTEE/PROVISIONAL/EMERGENCY BALLOT

### OFFICIAL DEMOCRATIC PARTY PRIMARY AND NONPARTISAN GENERAL ELECTION RUNOFF BALLOT OF THE STATE OF GEORGIA AUGUST 11, 2020

To vote, blacken the Oval (●) next to the candidate of your choice. To vote for a person whose name is not on the ballot, manually WRITE his or her name in the write-in section and blacken the Oval (●) next to the write-in section. If you desire to vote YES or NO for a PROPOSED QUESTION, blacken the corresponding Oval (●). Use only blue or black pen or pencil.

Do not vote for more candidates than the number allowed for each specific office. Do not cross out or erase. If you erase or make other marks on the ballot or tear the ballot, your vote may not count.

If you change your mind or make a mistake, you may return the ballot by writing "Spoiled" across the face of the ballot and return envelope. You may then mail the spoiled ballot back to your county board of registrars, and you will be issued another official absentee ballot. Alternatively, you may surrender the ballot to the poll manager of an early voting site within your county or the precinct to which you are assigned. You will then be permitted to vote a regular ballot.

*"I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law." [O.C.G.A. 21-2-284(e) and 21-2-383(e)]*

**For District Attorney of the  
Atlanta Judicial Circuit  
(Vote for One)**

☐ Paul Howard  
(Incumbent)

☒ Earl Willis

**For Sheriff  
(Vote for One)**

☒ Theodore "Ted" Jackson  
(Incumbent)

☐ Patrick "Pat" Labat

### NONPARTISAN GENERAL ELECTION RUNOFF

**For Judge, Superior Court of the  
Atlanta Judicial Circuit  
(To Succeed Constance C. Russell)  
(Vote for One)**

☐ Melynee Leftridge Harris

☐ Tamika Hrobowski-Houston

# Ex. 3

05150\_00001\_000002.tif scanned at: 11:38:44 on 08/04/20.

Scanned on: ICC Tabulator: 5150 Batch: 1

Poll ID: 739 Ballot ID: 445

DEM - District Attorney - Atlanta

Fani Willis

DEM - Sheriff

BLANK CONTEST

Superior Court - Atlanta - Russell

BLANK CONTEST



# FULTON COUNTY

877-11N

## OFFICIAL ABSENTEE/PROVISIONAL/EMERGENCY BALLOT

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Atlanta Judicial Circuit**  
(Vote for One)

☐ Paul Howard  
(Incumbent)

☒ Fani Willis

**For Sheriff**  
(Vote for One)

☐ Theodore "Ted" Jackson  
(Incumbent)

☒ Patrick "Pat" Labat

### NONPARTISAN GENERAL ELECTION RUNOFF

**For Judge, Superior Court of the  
Atlanta Judicial Circuit**  
(To Succeed Constance C. Russell)  
(Vote for One)

☒ Melynee Leftridge Harris

☐ Tamika Hrobowski-Houston

05150\_00003\_000029.tif scanned at: 12:58:26 on 08/04/20.

Scanned on: ICC Tabulator: 5150 Batch: 3

Poll ID: 625 Ballot ID: 472

DEM - District Attorney - Atlanta

BLANK CONTEST

DEM - Sheriff

Patrick "Pat" Labat

Superior Court - Atlanta - Russell

BLANK CONTEST



# FULTON COUNTY

531-12S

## OFFICIAL ABSENTEE/PROVISIONAL/EMERGENCY BALLOT

### OFFICIAL DEMOCRATIC PARTY PRIMARY AND NONPARTISAN GENERAL ELECTION RUNOFF BALLOT OF THE STATE OF GEORGIA AUGUST 11, 2020

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(Vote for One)

- ☐ Paul Howard  
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- ☒ Fani Willis

**For Sheriff**  
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- ☐ Patrick "Pat" Labat

### NONPARTISAN GENERAL ELECTION RUNOFF

**For Judge, Superior Court of the  
Atlanta Judicial Circuit**  
(To Succeed Constance C. Russell)  
(Vote for One)

☒ Melynee Leftridge Harris

☐ Tamika Hrobowski-Houston

05150\_00006\_000002.tif scanned at: 13:46:05 on 08/04/20.

Scanned on: ICC Tabulator: 5150 Batch: 6

Poll ID: 302 Ballot ID: 488

DEM - District Attorney - Atlanta

BLANK CONTEST

DEM - Sheriff

Theodore "Ted" Jackson (I)

Superior Court - Atlanta - Russell

BLANK CONTEST



**FULTON COUNTY**

813-01J

**OFFICIAL ABSENTEE/PROVISIONAL/EMERGENCY BALLOT****OFFICIAL DEMOCRATIC PARTY PRIMARY AND  
NONPARTISAN GENERAL ELECTION RUNOFF BALLOT  
OF THE STATE OF GEORGIA  
AUGUST 11, 2020**

To vote, blacken the Oval (●) next to the candidate of your choice. To vote for a person whose name is not on the ballot, manually WRITE his or her name in the write-in section and blacken the Oval (●) next to the write-in section. If you desire to vote YES or NO for a PROPOSED QUESTION, blacken the corresponding Oval (●). Use only blue or black pen or pencil.

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**For Sheriff**  
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☐ **Patrick "Pat" Labat**

**NONPARTISAN  
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RUNOFF**

**For Judge, Superior Court of the  
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(To Succeed Constance C. Russell)  
(Vote for One)

☒ **Melynee Leftridge Harris**

☐ **Tamika Hrobowski-Houston**

05150\_00004\_000035.tif scanned at: 13:28:59 on 08/04/20.

Scanned on: ICC Tabulator: 5150 Batch: 4

Poll ID: 75 Ballot ID: 339

DEM - District Attorney - Atlanta

Paul Howard (I)

DEM - Sheriff

BLANK CONTEST

Superior Court - Atlanta - Russell

Melynee Leftridge Harris

# The Law Office of Ann S. Brumbaugh, LLC

The High House  
309 Sycamore Street  
Decatur, Georgia 30030

Phone: 404-458-4088 (o); 404-593-8295 (c)  
E-Mail: [ab@annbrumbaughlaw.com](mailto:ab@annbrumbaughlaw.com)  
Website: [annbrumbaughlaw.com](http://annbrumbaughlaw.com)

August 19, 2020

VIA EMAIL and FEDERAL EXPRESS

Bruce Brown  
1123 Zonolite Road, NE  
Atlanta, Georgia. 30306  
[bbrown@brucepbrownlaw.com](mailto:bbrown@brucepbrownlaw.com)

Re: *Third Party Subpoena, Curling v. Raffensperger, United States District Court for the Northern District of Georgia, 17CV2989*

Dear Mr. Brown:

I represent the Cherokee Board of Elections and Registration ("Cherokee BOER"). The following is a response to the subpoena you served on my client on August 6, 2020, including objections pursuant to Federal Rule of Civil Procedure 45(d)(2)(B).

You have specifically requested the following:

1. *A digital printout of the scanned ballot images from the June 9, 2020 election appended for the Auditmark record showing the interpretation of each vote. Smith v. DeKalb County, 288 Ga. App. 574 (2007), and O.C.G.A. § 21-2-500(a) prohibit the Cherokee BOER from providing you these documents absent the Court ordering the production under seal.*
2. *A digital printout of the scanned ballot images from the June 9, 2020 election appended for the Auditmark record with color overlays of the ballot adjudication information showing the interpretation of each vote if available. Cherokee County BOER does not have any responsive documents.*

3. *An electronic copy (scan or digital printout) of the BMD test ballots used in the Logic and Accuracy Testing for the June 9, 2020 election.* Cherokee County BOER does not have any responsive documents.

4. *A copy of the test script used for the BMD Logic & Accuracy Testing for the June 9, 2020 election, showing the choices entered on each touchscreen during the testing.* Cherokee County BOER does not have any responsive documents.

5. *Instructions on guidance from the Secretary of State's office with respect to conducting Logic & Accuracy Testing.*

- a. "Secure the Vote" Logic & Accuracy Procedures, attached.
- b. May 6, 2020 email correspondence between Michael Barnes and Jonathan Densmore, attached.

6. *Documents from the Georgia Secretary of State or Dominion regarding adjudication software including the threshold settings and instructions for Vote Review Panels to adjudicate ballot marks.*

- a. Thumb drive with videos, provided via Fedex.
- b. "Early Scanning & Adjudication Absentee Ballots," attached.

7. *Copy of oaths taken by members of the Ballot Review Panel, personnel assigned to mail ballot scanning, confidentiality agreements or oaths sworn by Dominion technician assigned to Cherokee County.*

- a. Copy of oaths taken by members of Ballot Review Panel, attached.
- b. Copy of oaths taken by personnel assigned to mail ballot scanning, attached.
- c. Cherokee County BOER does not possess an oaths or confidentiality agreements sworn by Dominion technician.

8. *Documentation or reports relating to the ability to issue multiple voter access cards and electronic ballots to the same voter during one election.* Cherokee County BOER does not have any responsive documents.

9. *Documentation, communication, or reports relating to the ability for a voter to print and cast multiple BMD ballots.*

*Exhibit 4*

a. May 21, 2020 email correspondence between Jonathan Densmore and Michael Barnes, attached.

10. *Documents received from the Secretary of State regarding the use of a lockable usb drive in transferring data.* Cherokee County BOER does not have any responsive documents.

11. *Documents received from the Secretary of State regarding air-gapping of the Cherokee Dominion server.* Cherokee County BOER does not have any responsive documents.

Sincerely,

A handwritten signature in black ink, reading "Ann S. Brumbaugh". The signature is fluid and cursive, with the first name "Ann" and last name "Brumbaugh" clearly legible, and "S." as a small middle initial.

Ann S. Brumbaugh

*Attorney for the Cherokee Board of Elections and Registration*